

Public Chapter 165

HOUSE BILL NO. 202

By Representative Kisber

Substituted for: Senate Bill No. 113

By Senator Cooper

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 8, relative to the Tennessee Claims Commission.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 8, Part 3, is amended by adding the following as a new, appropriately designated section:

Section _____. Upon the request of the Governor, or of an individual claims commissioner as to claims within that commissioner's grand division, or of a majority of the claims commissioners as to claims within any grand division, the Secretary of State may assign administrative law judges from the administrative procedures division of the Secretary of State's office to assist in the removal of unacceptable congestion or delay on the claims commission docket. Upon such assignment, administrative law judges shall have all the powers, duties and immunities as a regularly appointed claims commissioner. Costs associated with the assignment of administrative law judges to hear claims commission matters shall be paid from the claims award fund.

SECTION 2. Tennessee Code Annotated, Section 9-8-301(b), (c) and (d), are amended by deleting the subsections in their entireties and by substituting instead the following:

(b) For administrative purposes, the commission shall be attached to the treasury department. The administrative responsibilities of the commission shall be performed by the State Treasurer, in consultation with the claims commission and under the oversight of the Board of Claims. The State Treasurer is authorized to delegate to the administrative clerk such of these responsibilities as he deems appropriate.

(c) The authority to appoint, terminate and control the staff of the commission shall rest with the State Treasurer; provided, however, the individual claims commissioners may appoint, terminate and control the staff personnel assigned to their respective offices. All decisions relative to compensation of the staff of the commission, including the staff positions assigned to the individual commissioners, shall be subject to the approval of the State Treasurer. The individual claims commissioners shall consult with the State Treasurer prior to taking any personnel action with respect to the staff personnel assigned to their respective offices, and the State Treasurer shall consult with the members of the claims commission prior to taking any personnel action for all other staff of the commission.

(d) The employees shall not have civil service status but shall be subject to personnel policies and regulations which are applicable to employees of the treasury department, such as leave, compensation, classification and travel requests.

SECTION 3. Tennessee Code Annotated, Section 9-8-304(a), (b), and (c), are amended by deleting the subsections in their entireties and by substituting instead the following:

(a) The claims commission, subject to the approval of the State Treasurer, shall designate a commission employee to serve as administrative clerk to the claims commission. The administrative clerk, in consultation with the commission chairperson, shall schedule meetings of the commission.

(b) The administrative clerk, in consultation with the commission chairperson, shall docket proceedings and schedule hearings on claims. Each claim shall be assigned to the appropriate commissioner for the grand division in which the wrongful act occurred or in which the claimant lives; provided, the chairperson of the commission shall have the authority to assign cases arising in one grand division to a commissioner in another grand division if such is necessary to alleviate congestion, delay, or an imbalance in caseloads among grand divisions. Each claim shall be heard in the grand division in which the wrongful act occurred or in which the claimant lives. The commission shall follow the law established for trial courts concerning opening proceedings to the public.

(c) The administrative clerk, in consultation with the State Treasurer, is responsible for the day-to-day management of the commission's staff and such other activities as may be required including, but not limited to, reporting on the status of claims. In managing the affairs of the commission, the State Treasurer shall consult with the claims commission.

SECTION 4. Tennessee Code Annotated, Section 9-8-305, is amended by deleting the first line thereof and by substituting instead the following:

Each commissioner, and each administrative law judge assigned pursuant to this part, has the authority to:

SECTION 5. Tennessee Code Annotated, Section 9-8-305(1), is amended by deleting it in its entirety and by substituting instead the following:

(1) Hear and determine claims against the state falling with the categories enumerated in § 9-8-307.

SECTION 6. Tennessee Code Annotated, Section 9-8-403(a)(1), is amended by deleting the word "Commissioners" in the fourth sentence thereof and by substituting instead the words, figures and punctuation "Except as provided in subsection (a)(2) below, commissioners".

SECTION 7. Tennessee Code Annotated, Section 9-8-403(a)(2), is amended by adding the following new sentences at the end thereof:

If a hearing is held on any claim on the small claims docket, the commissioner may dispose of such case by entering an appropriate order reflecting the commissioner's ruling. Except as provided by Section 29-13-109,

such order need not include findings of fact and conclusions of law unless requested by the claimant.

SECTION 8. Tennessee Code Annotated, Section 9-8-403, is amended by adding the following new subsection at the end thereof:

(l) The commission is encouraged to make oral decisions immediately after a hearing on any claim if the commission finds that further deliberation is unnecessary. If a claim is disposed of by an oral ruling, counsel for the prevailing party shall prepare and submit an appropriate order reflecting such ruling. Such order shall include proposed findings of fact and conclusions of law if the claim was heard on the regular docket or if the claimant requested such findings and conclusions in a hearing on the small docket. Any orders prepared by counsel for the prevailing party shall be submitted to the adverse party for approval.

SECTION 9. Tennessee Code Annotated, Section 9-8-405, is amended by adding the following new subsection at the end thereof:

(c) By agreement of the parties, a mediator may be employed in an attempt to settle a claim. Such a claim still must be settled in accordance with subsection (a) of this section and/or § 20-13-103. Costs associated with alternative dispute resolution, as agreed to by the parties, shall be paid from the claims award fund.

SECTION 10. The Comptroller of the Treasury is directed to make a study of the workload and productivity of the claims commission, as well as the processes used by the commission in fulfilling its role in adjudicating claims filed against the state. In performing this study, the comptroller is to be assisted by the claims commission and such other state agencies as may be appropriate. The scope of this study does not include an examination of the substance of rulings of the individual commissioners. The comptroller is to report his findings and recommendations to the Governor and General Assembly no later than January 15, 1998. Costs associated with this study shall be paid from the claims award fund.

SECTION 11. Notwithstanding any provision of this act to the contrary, the autonomy of individual claims commissioners in performing their claims adjudication function shall be respected by the State Treasurer and the Board of Claims. Nothing within this act shall be construed to give the State Treasurer or Board of Claims authority to supervise or take any personnel actions with regard to the individual claims commissioners.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. Tennessee Code Annotated, Section 9-8-403(a)(1), is amended by deleting the words "same rules of appellate procedure which govern appeals of final judgments entered in civil actions by trial courts" and by substituting instead the words "the same rules of appellate procedure which govern interlocutory appeals and appeals from final judgments in trial court civil actions".

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it; provided that, for purposes of implementation of the provisions of Sections 2 and 3 of this act regarding the administrative transfer of the claims commission, those sections shall become effective on July 1, 1997.

